

**Exhibit A**

***In re OAS Fin. Ltd.*, No. 15-11304 (SMB) (Bankr. S.D.N.Y. June 23, 2015)  
[Docket No. 43] (June 4, 2015 Hearing Transcript)**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Chapter 15  
OAS FINANCE LIMITED (in .  
provisional liquidation), . Case No. 15-11304 (SMB)  
Debtors. . One Bowling Green  
New York, New York 10004  
Thursday, June 4, 2015  
11 a.m.

TRANSCRIPT OF CONFERENCE  
BEFORE THE HONORABLE STUART M. BERNSTEIN  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Foreign  
Representative:

John K. Cunningham, Esq.  
WHITE & CASE, LLP  
200 South Biscayne Boulevard  
Suite 4900  
Miami, Florida 33131

Gregory M. Starner, Esq.  
WHITE & CASE, LLP  
1155 Avenue of the Americas  
New York, New York 10036

Michael B. Carlinsky, Esq.  
QUINN, EMANUEL, URQUHART  
& SULLIVAN, LLP  
51 Madison Avenue, 22nd Floor  
New York, New York 11010

(Continued)

ECRO:

Karen

Transcription Company:

Ad Hoc Transcription, LLC  
1915A Stonegate Lane  
Stanhope, New Jersey 07874  
(888) 516-5553  
www.adhoctranscription.com

Proceedings recorded by electronic sound recording, transcript  
produced by transcription service.

APPEARANCES:

For the Joint Provisional  
Liquidators:

Andrew Rosenblatt, Esq.  
Marc D. Ashley, Esq.  
CHADBOURNE & PARKE LLP  
1301 Avenue of the Americas  
New York, New York 10019-6022

For Aurelius and Alden  
Objectors:

Allan S. Brilliant, Esq.  
DECHERT, LLP  
1301 Avenue of the Americas  
New York, New York 10019-6022

1 NEW YORK, NEW YORK, THURSDAY, JUNE 4, 2015, 11 A.M.

2 MR. ROSENBLATT: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MR. ROSENBLATT: It's Andrew Rosenblatt from  
5 Chadbourne & Parke here on behalf of Mark McDonald and Marcus  
6 White who are the joint provisional liquidators of OAS Finance  
7 in the BVI.

8 Your Honor, the joint provisional liquidators filed a  
9 motion under Section 1519 seeking authority to take discovery  
10 from White & Case who we know represented OAS Finance at  
11 different points in times and in some capacity although that's  
12 been the subject of some dispute and I will say changing  
13 stories or fluctuating stories when we inquired about that.

14 Your Honor, and we're seeking documents pursuant to  
15 the scope that is authorized under Section 1521 which is  
16 extremely broad. Just by way of background, Your Honor, this  
17 was not a motion --

18 THE COURT: Isn't 1521 a post-recognition tactic?

19 MR. ROSENBLATT: It is but Section 1519 which permits  
20 provisional relief authorizes under appropriate circumstances,  
21 Your Honor, relief that's available under 1521.

22 THE COURT: As I understand your request, it's in two  
23 parts. It's the financial/business information from the  
24 foreign debtors and you want information from White & Case?

25 MR. ROSENBLATT: Yeah --

1 THE COURT: What do you want from White & Case?

2 MR. ROSENBLATT: Your Honor, we want all documents  
3 that are relevant to OAS Finance in White & Case's possession  
4 that relate to their affairs, their assets -- generally all the  
5 documents that are within the scope of 1521. I think almost by  
6 definition any documents that they've provided to OAS Finance  
7 representing them either individually or as part of the OAS  
8 Group fits within that category. To the extent they have other  
9 documents as well, we would ask for those. If --

10 THE COURT: How are you irreparably harmed if you  
11 don't get these prior to recognition?

12 MR. ROSENBLATT: Well, Your Honor, the issue here is  
13 that proceedings in Brazil are happening very quickly. There  
14 is going to be --

15 THE COURT: You know, I kind of get the feeling that  
16 this Court in the middle of what is essentially a discovery  
17 dispute between the BVI liquidators and I guess the Brazilian  
18 debtors --

19 MR. ROSENBLATT: Your Honor --

20 THE COURT: -- can't you get this information in  
21 Brazil? Isn't that the appropriate place?

22 MR. ROSENBLATT: It's not a discovery dispute. It  
23 goes beyond that. We are -- the joint provisional liquidators  
24 are the managers of the company. The essentially are OAS  
25 Finance. I know that their appointment is being challenged and

1 I know that White & Case and the entities would like to deny --  
2 they're in denial about that but our -- but the joint  
3 provisional liquidators are managing the affairs of the  
4 company. They are entitled to books and records. Your Honor,  
5 this could just as easily have been a turnover request but that  
6 would have required an adversary proceeding and from a timing  
7 standpoint, that wouldn't have worked but, Your Honor, there's  
8 going to be a plan that's going to be filed in Brazil. My  
9 understanding is that it's going to be on June 16th.

10 Our joint provisional liquidators need information.  
11 They need to --

12 THE COURT: I'm not arguing with the need for  
13 information but why don't you go to the Brazilian -- or seek  
14 the information from the Brazilian proceeding? You're seeking  
15 information here that doesn't sound like it's relevant to COMI  
16 or recognition. It's relevant to the Brazilian plan which  
17 hasn't been filed but -- so why don't you -- can't you get this  
18 in Brazil?

19 MR. ROSENBLATT: Well, it's to provide assistance,  
20 Your Honor. It's to provide assistance to the joint  
21 provisional liquidators so they can what their duties require  
22 them to do in the BVI --

23 THE COURT: But the document -- the information isn't  
24 here I assume. It's probably in Brazil.

25 MR. ROSENBLATT: Well, White & Case is here, and Your

1 Honor, the joint provisional liquidators are -- you know, they  
2 have requested information in Brazil from directors. They have  
3 requested information in the BVI. In fact, Your Honor, the --

4 THE COURT: Have you gotten it?

5 MR. ROSENBLATT: No, and --

6 THE COURT: So why don't you go to the Brazilian  
7 Court and say they haven't given us --

8 MR. ROSENBLATT: Well, Your Honor, what's interesting  
9 and I think the impetus for I think the recent if you'd even  
10 call it cooperation on the side of the directors is that my  
11 understanding is that there was a hearing in the BVI just last  
12 week and I believe that the directors QC just assumed that they  
13 were cooperating and when it became apparent that they weren't  
14 there was a -- the BVI "was surprised," and at that point in  
15 time finally after about six weeks, the directors committed to  
16 turn over books and records or to at least start turning over  
17 books and records.

18 But, Your Honor, just to give you some framework and  
19 just to give you some background, we didn't file this motion on  
20 a whim. This done after a six-week dance with White & Case  
21 where to be honest with Your Honor, we've been strung along.  
22 This request was made six weeks ago, and finally on June 1st  
23 after many letters, many e-mails and discussions, we finally  
24 got confirmation that they were just steadfastly refusing to  
25 turn over any documents on the grounds that we don't believe

1 warrant that position.

2 As I said, Your Honor, the joint provisional  
3 liquidators are OAS Finance. They are the entity that is  
4 authorized to manage the affairs of OAS Finance to the  
5 exclusion of all others. There is some residual power that the  
6 directors have to challenge the appointment of the other JPLs  
7 in BVI and they've done but that's it, Your Honor. The  
8 authority to manage the affairs rests solely with the joint  
9 provisional liquidators.

10 THE COURT: I'm not questioning that. I'm just  
11 questioning why this dispute is here as opposed to as in Brazil  
12 because you want the documents for the Brazilian proceeding.

13 MR. ROSENBLATT: They're pursuing all avenues, Your  
14 Honor. They have requested information from the directors in  
15 Brazil. They've requested information in the BVI. They've  
16 been rebuffed at every turn. We have filed this -- and, Your  
17 Honor, we don't take lightly the fact that we are asking for  
18 discovery from a law firm. We don't take this lightly -- to be  
19 quite frank, we're a little bit desperate and we feel that this  
20 is information the joint provisional liquidators are entitled  
21 to have, and quite frankly, we're asking for assistance which I  
22 think Chapter 15, you know, embodies, that's the entire purpose  
23 of Chapter 15 to provide assistance to foreign representatives  
24 so they can comply with their duties in the foreign proceeding.

25 THE COURT: All right.



1 MR. CUNNINGHAM: Good morning, Your Honor. John  
2 Cunningham of White & Case and Greg Starner and Mike Carlinsky  
3 are co-counsel of Quinn Emmanuel. Your Honor, this is exactly  
4 a discovery battle over information they want and have not  
5 received in Brazil. They --

6 THE COURT: But if the information is present in the  
7 United States, why can't they ask for it in the United States?  
8 Certainly, the information regarding the financial affairs of  
9 OAS Finance are something they should have.

10 MR. CUNNINGHAM: Books and records, Your Honor,  
11 ironically enough was a discovery item that Aurelius sought  
12 from us because OAS Finance we were seeking recognition for.  
13 We produced that to Aurelius's counsel and we produced it to  
14 Chadbourne.

15 THE COURT: Well --

16 MR. CUNNINGHAM: So those documents are -- we have  
17 the books and records. We gave it to them. Whatever is in our  
18 possession we can give to them. What they're doing, Your  
19 Honor, is simply this. They made a statement in front of the  
20 BVI court, I made mention of this at the recognition hearing.  
21 This was a statement they made.

22 "With regards to the issue of discovery, without  
23 intending to waive legal professional privilege, our U.S.  
24 counsel advised us that because the other OAS entities have  
25 submitted to the jurisdiction of U.S. courts by virtue of their

1 own Chapter 15 petitions, they would be subject to discovery  
2 and should our petition be recognized, we would be able to make  
3 requests for information through discovery. The value of  
4 utilizing discovery channels in U.S. proceedings cannot be  
5 understated."

6 They are using this 15 because they are frustrated in  
7 their minds of getting information in Brazil --

8 THE COURT: So why they can't do that?

9 MR. CUNNINGHAM: Because from our point of view, Your  
10 Honor, they have -- first of all, they filed in Brazil a  
11 request to have the Brazilian reorganization proceeding for OAS  
12 Finance Limited withdrawn and to have OAS Finance Limited  
13 recognized as a creditor. The Court last week in a ruling, and  
14 I attached that ruling, Your Honor, to my letter that I  
15 submitted ruled against them on that very issue. They put it  
16 in front of the Court; the Court ruled against them. The Court  
17 said when the cases were filed before me in Brazil, it was  
18 clearly -- interests were in Brazil and the Court said this is  
19 part of the overall reorganization of the OAS group, and  
20 therefore, I'm not recognizing the subsequent proceeding that  
21 has been filed in the BVI.

22 Now, they can go ahead and object just like here, you  
23 know, the Supreme Court says in Celotex if you get an adverse  
24 ruling you can go ahead and appeal. They have the right to  
25 appeal, they have the right to request whatever information,

1 documents they want but that's in Brazil. What they're asking  
2 for is Your Honor to get involved with those rulings and  
3 decisions and say well, we're not happy with what the Brazil  
4 court is doing, we would like the New York Court to suddenly  
5 start ordering discovery of information.

6 And, notably, Your Honor, they said here, they're  
7 going to take discovery of the OAS debtor, the other entities.  
8 They're taken against their counsel trying to get it from White  
9 & Case. I recognize Your Honor said clearly there's two  
10 categories; what -- you know, documents that we have in our  
11 possession that belong to OAS Finance, we can give to them.

12 THE COURT: Well, they say though that the legal  
13 materials which is sent to your joint clients is something  
14 they're entitled to.

15 MR. CUNNINGHAM: And that's what -- first of all, we  
16 don't think we have any legal memoranda and we're confirming  
17 that. We told them by Monday if we have it, we would give it  
18 to them but they need to know also we don't have any memorandum  
19 that says OAS Finance, here's your memorandum. It would have  
20 been on behalf of the four filing debtors who we have --

21 THE COURT: You have --

22 MR. CUNNINGHAM: -- we have a joint privilege issue.

23 THE COURT: You have joint clients.

24 MR. CUNNINGHAM: Right.

25 THE COURT: And any client is entitled to the

1 information, correct?

2 MR. CUNNINGHAM: Yes, but the other clients are also  
3 -- have the right to require that they not disclose that --

4 THE COURT: I think that --

5 MR. CUNNINGHAM: -- information.

6 THE COURT: -- if one of the clients becomes adverse  
7 -- and I looked at -- there were a couple of cases on this one.  
8 Once one of the clients in the joint client world becomes  
9 adverse, it's entitled -- there is no attorney-client privilege  
10 but I'm not going to decide that today. That's obviously the  
11 issue.

12 MR. CUNNINGHAM: In essence, I -- but again, Your  
13 Honor, in --

14 THE COURT: So --

15 MR. CUNNINGHAM: Yeah.

16 THE COURT: -- what information is in the United  
17 States that you're looking for? I'm not going to order any of  
18 these debtors to bring information from Brazil. I don't think  
19 that's what the purpose of that statute is you came here to get  
20 discovery but it's discovery of information here. So what do  
21 you have besides whatever -- is it anything more than whatever  
22 White & Case has in its files?

23 MR. ROSENBLATT: Your Honor, not only should White &  
24 Case [sic] should have a lot of documents in their files.  
25 They've not only represented the company in the BVI, my

1 understanding is they're involved in Brazil but they're also  
2 defending them in State Court actions but, Your Honor, let me -  
3 - if I may just take two seconds -- you know, I don't  
4 understand how anything Mr. Cunningham just talked about has  
5 any relevancy whatsoever to -- as to our entitlement to  
6 documents. He says we weren't happy with rulings in Brazil.  
7 They were approximately six weeks, Your Honor, on the first day  
8 that the joint provisional liquidators were appointed. It has  
9 nothing to do with what has transpired thus far in Brazil.  
10 It's that they needed information in order to make informed  
11 decisions.

12 And, Your Honor, there's no basis for distinguishing  
13 between books and records they may have and legal memoranda or  
14 other documents that were prepared for OAS Finance other than  
15 privilege issues but, Your Honor, the privilege runs to OAS  
16 Finance. It runs --

17 THE COURT: Unless they prepared documents for one  
18 but not all of the --

19 MR. ROSENBLATT: I -- Your Honor, and that is  
20 absolutely fair. Yeah, to the extent they prepared a document  
21 for say, OAS, S.A. solely, then yeah, I would agree with that,  
22 Your Honor.

23 THE COURT: Or maybe documents that they prepared --  
24 when was the joint -- when were the joint provisional  
25 liquidators --

1 MR. ROSENBLATT: April 15th -- 16th.

2 THE COURT: Maybe they can make the argument that  
3 even though they were still technically representing Finance  
4 after that date, you were so adverse that you're not entitled  
5 to the information but we're not deciding that today.

6 MR. ROSENBLATT: Right, yeah. But to address some of  
7 the privilege issues, Your Honor, our position is very simple.  
8 It's that the joint provisional liquidators essentially are now  
9 -- they are the managers. They simply are OAS Finance, the  
10 privilege runs to them. They have the benefit of that  
11 privilege. It's not necessarily waived --

12 THE COURT: But the question happened -- the question  
13 is when you have a joint client situation and one of the  
14 clients suddenly becomes adverse arguably to the other clients,  
15 why do those -- does that client have the right to materials or  
16 to the other three clients in essence saying, no, that's  
17 attorney-client privilege. I think the answer is that the  
18 affected client may be entitled to it without privilege but  
19 it's certainly not something I'm going to decide from the  
20 bench.

21 MR. ROSENBLATT: Yeah, I mean, right now -- I think -  
22 - you know, I do think you're right. I think that those are  
23 mutually exclusive issues. The entitlement is different than  
24 privilege. To the extent we're addressing privilege, I would  
25 have to refer to my expert here but right now we're talking

1 about entitlement, Your Honor.

2 THE COURT: All right.

3 MR. STARNER: If I may, Your Honor.

4 THE COURT: Who are you?

5 MR. STARNER: Greg Starnar on behalf of White & Case.

6 There are a few points that I wanted to make that I thought  
7 were important, and I think that the Court started off and  
8 important point which is that they're seeking discretionary  
9 relief on the 1519, and so the standard is irreparable harm and  
10 the question is have they made out any basis to get the  
11 discovery they're seeking from a U.S. law firm, and I think I  
12 have to propose to the Court that they have not.

13 What they're seeking is discovery -- now, it's  
14 important to keep in mind, I think two category of discovery  
15 they're seeking; one, legal memorandum, another advice that  
16 White & Case may have given to the BVI entity prior to their  
17 appointment, and two, information related to the OAS Group  
18 generally speaking. Two very distinct categories of  
19 documentation. And, respectfully, there's a thicket of  
20 privilege issues as to the first category. The issue of  
21 whether or not they're entitled to get anything from prior to  
22 their appointment, there's some significant issues there, and  
23 respectfully I don't necessarily --

24 THE COURT: So are you going to file a privilege log?

25 MR. STARNER: Excuse me?

1 THE COURT: Are you going to file a privilege log?

2 MR. STARNER: We can certainly prepare something,  
3 rather burdensome; there's a lot of materials there but, you  
4 know, as to --

5 THE COURT: How else do you decide it?

6 MR. STARNER: True but I mean, we are certainly  
7 looking for anything specifically -- any advice, materials  
8 given to BVI Finance and there's association [sic] also between  
9 attorney-client communications and work product of course.  
10 Work product would not be something we'd ever remit, and also  
11 important to keep in mind that in the BVI, the directors of the  
12 company are challenging the appointment of the JPLs. So under  
13 BVI law, they retain residual authority to do that --

14 THE COURT: Well, they can certainly challenge and I  
15 recognize that they're adverse.

16 MR. STARNER: But I'm suggesting to the Court there  
17 may be issues with BVI privilege and U.S. privilege there as to  
18 what privilege remains because they are, of course, adverse.  
19 The directors of the BVI entity and the JPLs.

20 THE COURT: It's true, I don't even know which law  
21 privileges applies.

22 MR. STARNER: And so I mean they suggested that we're  
23 entitled -- they're entitled to get memorandums or advice we  
24 gave to the directors last week in connection with challenging  
25 their appointment in the BVI? Certainly, that would not be



1 something they would be entitled to.

2 But, going back to the irreparable harm, the  
3 suggestion here is they need this to help them in Brazil. You  
4 know, as the Court rightly acknowledged this is not -- does not  
5 have anything to do with recognition, and so they're asking the  
6 Court to give them license for discovery to help them in Brazil  
7 which is a different --

8 THE COURT: I understand that but if they were  
9 irreparably harmed in connection with not getting that  
10 information produced in Brazil, wouldn't that satisfy the  
11 irreparable harm requirement?

12 MR. STARNER: I don't think so. I think so right now  
13 the analysis is are they -- would they be irreparably harmed in  
14 connection with seeking recognition from this Court. They don't  
15 have recognition yet and they're asking this Court for  
16 discretionary relief and how -- so they'd have to make a  
17 showing that somehow they need this in connection with getting  
18 recognition.

19 And just the second point is as I think the JPLs have  
20 rightly acknowledged, they are actively participating in  
21 Brazil. So they have every right to participate in Brazil.  
22 They talk about a potential plan that may be filed which they  
23 have every right to object to. And then in terms of likelihood  
24 of success, we haven't heard about that yet of course. We have  
25 significant issues and questions about COMI, whether COMI is in

1 Brazil or the BVI. As I think Mr. Cunningham noted, the  
2 Brazilian Court just recently rejected the JPLs' attempt to  
3 withdraw the BVI entity from the Brazilian proceeding and said  
4 no doubt, COMI is in Brazil --

5 THE COURT: Am I bound by that?

6 MR. STARNER: I think that it's at the very least, a  
7 very persuasive finding by the Brazilian Court --

8 THE COURT: Was there an evidentiary hearing?

9 MR. STARNER: I don't know the answer to that, Your  
10 Honor, but we certainly will be prepared to explain it --

11 THE COURT: Judges say things from the bench all the  
12 time, Your Honor. Sometimes we don't --

13 MR. STARNER: I'm sure it was very considered, that  
14 the Brazilian Court would never say something of that  
15 significance, and that's a significant ruling that they -- from  
16 our perspective, and then number two, there is of course the  
17 COMI manipulation concerns that we have. So significant issues  
18 about well, we question whether they would have a likelihood of  
19 success even if we got to that element of 1519 relief.

20 And then finally, you know, talking about public  
21 policy and talking about the balance of harms, they are seeking  
22 discovery from a U.S. law firm. It's a very significant issue,  
23 and the suggestion that they are -- should be allowed a license  
24 to get in under the hood notwithstanding any of the thicket of  
25 privilege issues that would need to be navigated here I think

1 presents serious issues. And frankly falling back and just  
2 coming back to I think what Mr. Cunningham mentioned to you, so  
3 the two pieces are they're asking for give us everything that  
4 you gave to the BVI entity prior to our appointment and give us  
5 everything to do with the OAS group and help us in Brazil.

6 This first category they've asked for the materials  
7 dealing with the company's finance and corporate records from  
8 the directors in the BVI and now they're asking this Court  
9 well, we also want to ask White & Case because if they have it,  
10 we want to get it from them, too. The directors have agreed to  
11 give them the materials they have --

12 THE COURT: Well, but from what I've been reading in  
13 the letters and e-mails going back and forth they've agreed to  
14 give to them but they haven't given it to them.

15 MR. STARNER: That's true. They are in the process  
16 of pulling that together. They've told the BVI court --

17 THE COURT: I thought it was given to Aurelius  
18 already.

19 MR. STARNER: Well, there's -- a number of -- a lot  
20 of materials were but if you recall, there was a time period  
21 there that it was a little more limited and narrow. So we're  
22 willing to go beyond -- I should say the directors have  
23 indicated they are going to go beyond that and collect  
24 additional materials there.

25 So they are giving those materials and that's I think

1 consistent with what's going on in the BVI. It's not really  
2 before this Court. They're asking this Court to give them  
3 permission let's go after a U.S. law firm because that's the  
4 only entity that's in the U.S. so we want to go after them and  
5 we just think that's just inherently improper.

6 THE COURT: Well, you can take discovery from law  
7 firms.

8 MR. STARNER: As a lawyer --

9 THE COURT: I've been deposed as a lawyer.

10 MR. STARNER: -- it raises significant issues -- I'm  
11 sorry?

12 THE COURT: I was deposed as a lawyer.

13 MR. STARNER: Is that right?

14 THE COURT: Yes.

15 MR. STARNER: I'm sure you did very well, Your Honor.  
16 Lawyers are easily some of the worst deponents ever.

17 I'm not saying that discovery is not in some  
18 circumstances against law firms appropriate but I think here  
19 it's not appropriate. I mean, you have to make an  
20 extraordinary showing that you can't get it anywhere else, and  
21 at the end of the day, I guess what I'm suggesting to the Court  
22 is what they're asking for we're not going to be able to give  
23 it to them anyway because of the issues of privilege.

24 THE COURT: Right. Anybody who hasn't spoken on  
25 this?

1 MR. BRILLIANT: Your Honor, Allan Brilliant on behalf  
2 of Aurelius and all but I actually came just to watch, Your  
3 Honor, but one thing I just would like to make clear from the  
4 record is and I think Mr. Starner, you know, said this in  
5 answering Your Honor's question. We received very little with  
6 respect to BVI Finance. As Your Honor knows, we asked for  
7 information sufficient to show, information sufficient to show  
8 so we did not receive all the books and records --

9 THE COURT: Uh-huh.

10 MR. STARNER: -- and that has not been made publicly  
11 available.

12 THE COURT: Okay. But you got what you asked for,  
13 right?

14 MR. BRILLIANT: Excuse me?

15 THE COURT: You got what you asked for.

16 MR. BRILLIANT: We got what we asked for which is --  
17 we didn't ask for all the books and records of the company.

18 THE COURT: Okay.

19 MR. BRILLIANT: And it was -- as Mr. Starner says, it  
20 was limited to a certain particular date and time.

21 THE COURT: Okay.

22 MR. ASHLEY: Good morning, Your Honor. Mark Ashley  
23 of Chadbourne & Parke for the JPLs. Just a few quick points on  
24 these issues.

25 First of all, as Mr. Rosenblatt said, clearly we own

1 the privilege currently. The thicket of privilege issues that  
2 the other side is raising has been simply the basis for them to  
3 steadfastly refuse to produce anything. We're happy to discuss  
4 that thicket of privilege issues but within a joint client  
5 context we are entitled at least to access to materials.

6 If they want to discuss a protocol of what we can do  
7 with those -- we think we're entitled to do what we want with  
8 them but if they want to discuss a protocol --

9 THE COURT: Even if they disclosed communications  
10 with the other clients?

11 MR. ASHLEY: I'm sorry?

12 THE COURT: Even if they disclosed privileged  
13 communications with joint clients?

14 MR. ASHLEY: If -- yes. If Finance was a party to  
15 those communications, we think we're entitled to those --

16 THE COURT: So one member of a joint client  
17 consortium can waive the privilege as to all others?

18 MR. ASHLEY: We believe in -- when adversity has been  
19 created or triggered, yes, but if there are particularly  
20 sensitive documents that they want to establish a protocol  
21 about that, we can discuss that.

22 Secondly, with respect to what law governs, we think  
23 it is U.S. law with respect to White & Case's materials here.  
24 To our knowledge, there's no conflict of law either with  
25 respect to Brazil or the BVI that would give rise to any

1 conflict of law analysis. We think the law is similar in all  
2 the jurisdictions but in any event we think U.S. law would  
3 govern.

4           There was mention of whether we're entitled to  
5 privileged materials or advice given to the directors with  
6 respect to challenging the BVI proceeding, we're happy to carve  
7 that out. I would concede we're perhaps not entitled to that  
8 because that's the slight residual power that the directors  
9 have left. We would carve that out from our request.

10           Finally, Your Honor, just -- there was mention of  
11 this COMI finding -- supposed COMI finding in Brazil. I would  
12 just note that that was a gratuitous statement by the Judge.  
13 The absence of evidence were argument. COMI is an alien  
14 concept in Brazilian law, and in any event as Your Honor I  
15 think suggested, this Court has to make its own independent  
16 analysis.

17           THE COURT: Okay. Look, I am -- I'm not going to  
18 grant the application for emergency discovery. You failed to  
19 demonstrate that you'd be irreparably harmed by not getting it.  
20 None of this discovery really relates to the issue that's going  
21 to be before me initially at least; that is recognition of the  
22 BVI provision as a -- I assume a foreign main proceeding.

23           All of this discovery seems to relate then and your  
24 application says you're concerned about the Brazilian plan and  
25 how it's going to affect your rights. Being told that you've

1 requested the information in Brazil also, you certainly have an  
2 adequate remedy there. I would be surprised if you can't get  
3 information in Brazil. Obviously if you can't, that's one  
4 argument as to why a plan shouldn't be recognized.

5 And, although it hasn't really been discussed at  
6 length, I think there's a very serious question about whether  
7 the BVI proceeding would be recognized either as a main or  
8 foreign proceeding. There are substantial COMI questions which  
9 came up in connection with OAS Investments, the Austrian entity  
10 at the hearing on recognition. And maybe the resolution of  
11 that issue will clarify whether or not the BVI proceeding to be  
12 recognized as a main proceeding. I don't know the basis to  
13 recognize it as a non-main proceeding. I assume you've asked  
14 for that in the petition.

15 So there is a substantial question about that but  
16 really the bottom line is that this information is in Brazil,  
17 we've requested it in Brazil and it concerns a Brazil  
18 proceeding. You failed to show that you're irreparably harmed  
19 if you don't get it through White & Case here or through an  
20 order which essentially forces the Brazilian directors to bring  
21 the information into the United States which I don't think is  
22 an appropriate use certainly on an emergency basis of getting  
23 information.

24 Now, I also got a letter from Quinn Emmanuel. Did  
25 you see that letter?



1 MR. ROSENBLATT: We did.

2 THE COURT: Why don't we deal with this one now. Go  
3 ahead.

4 MR. CARLINSKY: May I be heard, Your Honor?

5 THE COURT: Yes.

6 MR. CARLINSKY: Michael Carlinsky from Quinn  
7 Emmanuel. The question raised by our letter is whether or not  
8 the JPLs should be required to produce documents responsive to  
9 two document requests. We served a set of document requests to  
10 Your Honor in connection with the JPLs' application for  
11 recognition and we asked for eleven categories of documents.  
12 There are two that are at issue and they're identified in our  
13 letter.

14 One is documents regarding communications between the  
15 JPLs and creditors, and the second is documents concerning the  
16 JPLs' decision to withdraw or attempt to withdraw Mr. Tavares'  
17 filing of the Chapter 15. I just want to give the Court a  
18 little bit of context.

19 When Aurelius came in here and was challenging Mr.  
20 Tavares' authority as a foreign representative and the issues  
21 of where is COMI with respect to the Austrian entity, we turned  
22 over documents. We made Mr. Tavares available. He sat for  
23 deposition for nine hours. He asked for -- he was asked all  
24 questions regarding his authority in COMI. Mr. Munhoz was  
25 deposed for five or six hours and of course answered all the

1 questions.

2 Here, we have a very serious question, and I don't  
3 mean to echo Your Honor's comments from a few moments ago but  
4 there's a real serious issue here as to whether or not the JPLs  
5 can get recognition of the BVI action as foreign main. They've  
6 not sought in their application to treat it as foreign non-  
7 main. So it's only about foreign main.

8 And the -- the facts here and the sequence of what  
9 happened is also important. As Your Honor knows, the Chapter  
10 15s were filed here by Mr. Tavares on behalf of all four  
11 debtors on April 15th. Within twenty-four hours, at the  
12 direction of Aurelius, the JPLs sought and were appointed by  
13 the BVI court as provisional liquidators and as we've seen in  
14 some of the materials we provided to the Court, Aurelius is  
15 both paying the fees and indemnifying, the -- Finance's stake  
16 in the BVI.

17 As this Court recognized in Sun Trust, as the Second  
18 Circuit recognized --

19 THE COURT: Sun Tech.

20 MR. CARLINSKY: Sun Tech. I'm sorry. Sun Tech,  
21 thank you, Your Honor.

22 THE COURT: Sun Trust is a Florida bank.

23 MR. CARLINSKY: Yeah. Different case. Sun Tech as  
24 well as -- there's a real issue as to whether COMI has been  
25 manipulated and here, it is a real issue. If you just look at

1 the circumstances of the timing of things, it sort of raises a  
2 clear red flag. The JPLs are saying one of the bases for why  
3 COMI should be recognized in the BVI is that the JPLs have been  
4 involved with the creditors, have been having communications  
5 with creditors. They're relying on that fact to support what  
6 they're going to ultimately argue to Your Honor demonstrates  
7 COMI in the BVI, yet when we ask for those communications,  
8 we're told no.

9 Now, we had -- it wasn't myself but White & Case had  
10 a meet and confer with Chadbourne & Parke a week ago, and at  
11 that point in time, we were told the only category that the  
12 JPLS really objected to was Category 8 which are documents  
13 concerning the decision to withdraw Mr. Tavares' Chapter 15.  
14 With respect to the other category, namely communications with  
15 creditors, they would produce documents from the point of their  
16 appointment forward but would not go backwards, and we said  
17 that's not acceptable to us but at least we don't have to  
18 disagree on the documents post-their appointment.

19 Now their position is they're not going to produce  
20 either category and the objections that have been leveled, Your  
21 Honor, are somewhat of the sort of kitchen sink but that it's  
22 burdensome, it's not relevant, and then they throw in for good  
23 measure that it may amount to a waiver of privilege materials.  
24 It's hard to imagine the burden associated with producing to us  
25 documents regarding communications with creditors particularly

1 since they're relying upon that as a fact to support their  
2 claim that COMI should be recognized in the BVI.

3 We've also been told that their communications with  
4 Aurelius go back a week or two from the April 16th appointment.  
5 So again if we're asking the question of burden, it's really  
6 hard to see how there could be much of any burden with  
7 requiring if there are e-mails, if there are memos between  
8 Aurelius or other creditors on the one hand and the JPLs that  
9 they be required to produce those.

10 On the relevance issue, I don't have to tell the  
11 Court the definition of relevance but here, it is clear we're  
12 going to be challenging COMI, and it is clear that the Court is  
13 going to have to look at whether or not COMI exists and whether  
14 or not it has been manipulated, and this would be a very  
15 important focus. And I'll give the Court I think the most  
16 obvious example. We may see a communication, for example, from  
17 Aurelius. It may say to Grant Thornton we would like you to  
18 file immediately for liquidation -- to be appointed as  
19 liquidators in the BVI because we're expecting Mr. -- we're  
20 expecting OAS to file Chapter 15 proceedings in the U.S. and  
21 we'd like to ultimately take steps to move the COMI to BVI or  
22 we may --

23 THE COURT: Wouldn't you love to find that.

24 MR. CARLINSKY: Or something -- I would love to find  
25 that and I'm still optimistic that something similar to that

1 will -- but whatever the communications are, Your Honor  
2 deserves to see them and be able to assess what really went on  
3 that caused these JPLs to run into the BVI to take the actions  
4 that they did at whose behest and at whose direction and  
5 control are they really acting at this point.

6 And similarly with respect to Category 8, Your Honor,  
7 the decision to withdraw is relevant here, and it's relevant  
8 for a separate purpose besides just the question of COMI. It's  
9 relevant for the following reason. As Your Honor I think  
10 understands, if COMI is not in the BVI and there's no request  
11 for a foreign non-main, then either it would be thumbs up or  
12 thumbs down on whether the JPLs' Chapter 15 could be recognized  
13 here and we think ultimately that that recognition will not be  
14 granted, and so then the question is why are they taking the  
15 position, why have they sought to withdraw Mr. Tavares' filing  
16 of the Chapter 15. Do they really think it's in the best  
17 interest of creditors, the creditors of Finance if they -- all  
18 creditors as opposed to just Aurelius, do they really think  
19 it's in the best interest of all creditors that there be no  
20 recognition, that there no stay associated with a Chapter 15  
21 recognition and that also --

22 THE COURT: Well, they've already said they don't  
23 fight the plan that they anticipate because it's going to  
24 substantively consolidate and wipe out their claim.

25 MR. CARLINSKY: That can be their position but what

1 about the stay. Is that really something that they feel is not  
2 in the best interest of all creditors, the stay that would go  
3 along -- or the stay that would have gone with Mr. -- the  
4 recognition of Mr. Tavares' filing of the Chapter 15?

5 And so they've sought to withdraw the --

6 THE COURT: Well, they got the stay.

7 MR. CARLINSKY: They have a TRO --

8 THE COURT: Well, the damages -- you know, is there  
9 any property left that can be seized --

10 MR. CARLINSKY: I don't know.

11 THE COURT: -- in the United States?

12 MR. CARLINSKY: I don't know. But if their Chapter  
13 15 is not recognized, can they ask for a stay? I don't know  
14 the answer to that. Or can they ask for a TRO. So they've  
15 come in and they've asked the Court to withdraw or dismiss Mr.  
16 Tavares' Chapter 15, and we brought this up, Your Honor, at --  
17 I think it was at the recognition hearing -- and of course that  
18 has not been done. The Court has not withdrawn or dismissed  
19 Mr. Tavares' Chapter 15 and one of the --

20 THE COURT: He didn't proceed with recognition on it.

21 MR. CARLINSKY: We didn't --

22 THE COURT: So I don't --

23 MR. CARLINSKY: -- no, we respected --

24 THE COURT: -- I don't have to do anything.

25 MR. CARLINSKY: You don't have to do anything but

1 what we think has to happen is if they have to proceed, if they  
2 are going to continue to pursue this request for dismissal or  
3 withdrawal that it should be done on notice and there should be  
4 a hearing because under 305 this Court has to make a  
5 determination that dismissal or withdrawal is in the best  
6 interest of creditors, and it raises real questions as to what  
7 are they really up to here and at whose direction are they  
8 acting. Are they acting at the direction of a creditor,  
9 Aurelius and its affiliates or are they really acting because  
10 they're doing so in the best interest of all creditors, but  
11 that's not a question for today.

12 All we want today is that they be required on  
13 Category 2 to produce the communications including those that  
14 predate in the week or two prior to their appointment and  
15 documents concerning the decision to withdraw or seek  
16 withdrawal of Mr. Tavares' petition, and I don't understand how  
17 there could be any privilege associated. If there are  
18 documents that are privileged, they can assert privilege but  
19 communications with a third-party creditor couldn't possibly be  
20 privileged, and that's our request, Your Honor. Thank you very  
21 much.

22 MR. ASHLEY: Good morning again, Your Honor. Marc  
23 Ashley from Chadbourne & Parke.

24 First of all, just a moment's worth of context. The  
25 argument at least to me is stark. They told us today that they

1 were going to -- they were willing to produce certain materials  
2 to us; they never did after weeks of requests. We on the other  
3 hand are engaged in no gamesmanship here, Your Honor --

4 THE COURT: Well, they tell me -- this letter says  
5 you've met and conferred and your position is the --

6 MR. ASHLEY: And I'll explain just -- we have been  
7 cooperative and efficient. We are taking positions with  
8 respect to their requests that are clearly mandated by the case  
9 law. As I speak to you, I don't know what's in the documents.  
10 We're in the process of collecting -- this is not a -- these  
11 are not tactical decisions. I've looked at the case law and I  
12 think our positions are clearly mandated by the cases.

13 First of all, Your Honor, the -- we've asserted very  
14 limited objections. We have agreed to produce documents with  
15 respect to nine out of the eleven requests. We've objected to  
16 none of their four deposition notices. So in my view we are  
17 the cooperative side in this dispute, and if anyone is playing  
18 games, it's the other side.

19 A threshold issue, Your Honor, that was referenced  
20 here; in Mr. Carlinsky's letter, he cites to the Second  
21 Circuit's Fairfield case which I know Your Honor is familiar  
22 with. The Second Circuit in Fairfield indicated that COMI is  
23 determined as of the time of the filing of the Chapter 15  
24 petition but then generously allowed consideration of supposed  
25 COMI manipulation of the time period starting from the date of



1 the initiation of the foreign proceedings. That's the position  
2 we're taking here, and by the way Your Honor adopted the same  
3 standard in Sun Tech last year.

4 THE COURT: But in all the discovery that I've dealt  
5 with in this case so I think I dealt with it also in Aurelius  
6 and Alden, you go back a little bit in time before the  
7 commencement of the foreign proceeding because there may be  
8 documents relevant to the manipulation of the COMI which led up  
9 to the filing of the foreign proceeding in the first place.

10 In other words, their argument is that before  
11 anything was filed, we got -- Aurelius and Alden I guess got  
12 together and they -- let's rest control of this process even  
13 though the BVI has nothing to do with this company and it's  
14 registered there, we're going to get the JPLs appointed and  
15 they're going to start to talk to creditors and then they're  
16 going to come here and say look at all the stuff we found, this  
17 is our nerve center. That's really what the theory of the case  
18 is.

19 MR. ASHLEY: Right. And -- right.

20 THE COURT: And I can't really limit them to  
21 communications that occurred after the JPLs who were appointed  
22 and we're really not talking about a long period of time before  
23 then because all of this has erupted in a relatively short time  
24 span. I don't know how you use that cutoff date to that  
25 particular category.

1 MR. ASHLEY: I guess, Your Honor, we think that you  
2 can reach that sort of -- that bright line because the Second  
3 Circuit has already articulated it. The Second Circuit --

4 THE COURT: That wasn't a discovery decision though.

5 MR. ASHLEY: But the Second Circuit's sort of policy  
6 consideration was that if you allow discovery or consideration  
7 to go back in time, it can go endlessly back in time and at  
8 some point a bright line has to be established.

9 THE COURT: But they're not asking for discovery  
10 regarding what Finance did in the BVI in terms of conducting  
11 business or anything like that. They're making a very specific  
12 allegation on this point that Aurelius and Alden got together;  
13 they decided that a JPL should appoint -- be appointed and then  
14 create an aura of COMI in BVI when none previously existed in  
15 order to rest control of the case from the Brazilian  
16 proceeding. That's their theory.

17 MR. ASHLEY: I know that's their theory and --

18 THE COURT: And I just can't see how I can stop and  
19 start it on the day that the filing -- you know, that the  
20 application was filed in the BVI.

21 MR. ASHLEY: Last thing I'll say on that is I think  
22 the Second Circuit has indicated that it's legally irrelevant  
23 and it's significant what happens before that date because it  
24 sought to establish a bright line with respect to this sort of  
25 analysis. And that -- by the way, that timing language was

1 conveniently absent from their --

2 THE COURT: We know what the case says.

3 MR. ASHLEY: Let me make one thing very clear. There  
4 was -- in -- to my listening wild exaggeration in their  
5 characterization of our views. We never said that we're not  
6 producing communications with creditors. We have again made  
7 limited objections to two requests; otherwise, we intend to  
8 produce all responsive materials.

9 THE COURT: Is your objection to simply a timing  
10 request or is it a request to communications with Aurelius and  
11 Alden?

12 MR. ASHLEY: It's twofold. One was based on timing.  
13 We understood the request as primarily dealing with the time  
14 that predated the appointment and that seemed to be the gist of  
15 the request, but to the extent that it seeks documents from  
16 after --

17 THE COURT: Well, you know, the answer is they're not  
18 joint provisional liquidators until they're appointed joint  
19 provisional liquidators. So they can't have communications as  
20 joint provisional liquidators with Aurelius or Alden or anybody  
21 else until they're appointed.

22 MR. ASHLEY: Well, the request is regarding their  
23 appointment. I understood that to be regarding their  
24 prospective or potential appointment.

25 THE COURT: Oh, okay. I see.

1 MR. ASHLEY: And to the extent, Your Honor, that the  
2 request seeks documents from April 16th, we think that there's  
3 an important issue there, that request -- discovery requests  
4 that go to the efficacy or validity of the BVI proceedings are  
5 really out of the bounds of discovery here. If they want to  
6 complain about the validity of the BVI proceedings, they can go  
7 to BVI and they absolutely have done so with full gusto.

8 THE COURT: Well, one of the arguments you're going  
9 to make for COMI that among the things we have done in the BVI  
10 is we have defended the appointment of the JPLs?

11 MR. ASHLEY: Yes. So the activities that post-date  
12 the appointment are fair game. I understand that they have --  
13 that they suppose a COMI manipulation theory. Again, we're  
14 going to be producing documents from after that period.

15 I would like to cite, Your Honor, a case that I think  
16 goes to Request Number 2, the SMP Boat Services case from the  
17 Southern District of Florida in 2012. There, the Bankruptcy  
18 Court was found to have abused its discretion in allowing  
19 discovery that went to the bonafides of the specific foreign  
20 proceeding as opposed to the generic foreign proceeding more  
21 generally.

22 THE COURT: Oh, I don't think there's anything  
23 inconsistent with concluding that the JPLs are appointed and  
24 they are the JPLs and they representatives of Finance but yet  
25 finding that there's a manipulation of COMI.

1 MR. ASHLEY: Right. And I'm just referring to  
2 Request Number 2 which is about the validity -- if it's about  
3 the validity of the appointment to us, that's --

4 THE COURT: That's an issue for the BVI court. I'm -  
5 -

6 MR. ASHLEY: Well, right. That's why we objected to  
7 it, based on timing and the gist of it as going to the efficacy  
8 of the BVI proceeding --

9 THE COURT: I don't -- well, maybe I should hear from  
10 the other side as to what -- again, as to what the purpose of  
11 Request Number 2 is. I'm not going to rule that they were not  
12 properly appointed --

13 MR. CARLINSKY: No, and that's not the point of --  
14 that's not the point of Request Number 2, and I think we made  
15 it clear -- I didn't but in the meet and confer. We want to  
16 see the communications that led to the appointment of the JPLs.  
17 Very plain and simple. Your Honor articulated it better than I  
18 can. We believe that this was all contrived or manipulated, we  
19 believe Aurelius and Alden did exactly what Your Honor was --

20 THE COURT: Speculating.

21 MR. CARLINSKY: -- speculating or we're -- but that's  
22 what we believe really happened and the only way to know for  
23 sure is to look at when those communications started, what were  
24 the communications, what were the requests, what were the  
25 directions. And I have to ask sort of the simple question

1 which is a question my mother would ask which is what are they  
2 hiding? What are they hiding?

3 THE COURT: Sounds like the same question --

4 MR. CARLINSKY: It can't be --

5 THE COURT: -- my mother would ask but I'm not sure  
6 it's a legally relevant --

7 MR. CARLINSKY: And the answer is, Your Honor, I  
8 don't know if there's anything to hide. That is the -- our  
9 positions are dictated what we think are clear legal  
10 principles.

11 MR. ASHLEY: But if it's a relevance issue, the scope  
12 of relevance is so broad --

13 THE COURT: Well, let me say this. My reaction is  
14 that they are entitled to the documents under Request Number 2  
15 that they've requested for the reasons we discussed. I also  
16 recognize that you just got this letter. So, if you want to  
17 make a motion for a protective order, I'm not stopping you. I  
18 just think that they're entitled to it. It fits within their  
19 manipulation of COMI theory. And it's certainly not  
20 burdensome, you're talking about a couple of weeks of  
21 communications and certainly communications I guess post-  
22 appointment are relevant -- you know, the pleadings themselves  
23 that you communicated with the stakeholders and obviously  
24 Aurelius and Alden are stakeholders and one of the things the  
25 JPLs argue is that, you know, look at everything we're doing,

1 we are administering this case; as part of that administration,  
2 we are communicating with the creditors obviously.

3 MR. ASHLEY: And, again, we weren't objecting to  
4 communications generally post-appointment. That was not our  
5 position.

6 THE COURT: That's my reaction.

7 MR. ASHLEY: With respect to Request Number 8, Your  
8 Honor, with pertains to the withdrawal of the Tavares Finance  
9 petition, we believe again it's -- we're taking principal  
10 position, a position that is not dependent on our knowledge of  
11 any documents. Our view is that it is only the fact of the  
12 withdrawal of Tavares' authority that is relevant to COMI.

13 THE COURT: Now, what -- other than the fact that  
14 this is one of the activities of the JPLs, why do you need that  
15 information?

16 MR. CARLINSKY: We'd like to see what was the  
17 rationale. Was it a legitimate rationale as to why they were  
18 asking for or ultimately decided to seek the withdrawal by Mr.  
19 Tavares or was it being done at the behest of a creditor or was  
20 it being done for some other interest other than really their  
21 desire to seek recognition of their own Chapter 15.

22 THE COURT: Well, you've already -- you're going to  
23 presumably get documents that deal with communications with  
24 creditors about all issues.

25 MR. CARLINSKY: Yes.

1 THE COURT: So why wouldn't that -- what you're  
2 seeking be swept up in that?

3 MR. CARLINSKY: It may be but if it's not a  
4 communication with creditors, if it's a communication for  
5 example between the two JPLs themselves, so I'm going to leave  
6 out what may be clearly privileged which may be communications  
7 between the JPLs, Grant Thornton and their counsel but there  
8 could be a multitude of documents within Grant Thornton or  
9 there could be communications with others, not creditors that  
10 bear on this particular issue. And again I think it's  
11 something that the Court deserves to see. It may ultimately  
12 bear on the manipulation --

13 THE COURT: How does it -- it certainly doesn't bear  
14 on recognition, does it?

15 MR. CARLINSKY: I think it goes to -- it could go to  
16 the COMI manipulation point again which is why are they -- why  
17 did they take the actions they took with respect to withdrawing  
18 Mr. Tavares' application. Why did they -- why were they  
19 refusing to agree to keep Mr. Tavares' stay which the Court had  
20 issued in place. What is the motivation here and at whose  
21 direction are they acting.

22 THE COURT: I thought they initially did a deposition  
23 and then they got their own stay.

24 MR. CARLINSKY: Well, they asked for their own stay  
25 and they refused our request to keep effectively two stays in



1 place, Mr. Tavares' --

2 THE COURT: It wasn't for them to grant you a stay,  
3 them being the BVI JPLs. They got their own stay from --  
4 essentially from Aurelius and Alden who were going to attach  
5 property. You know, given the level of animosity, it's clear  
6 to me why, you know, Aurelius and Alden would not grant a  
7 further stay to the other OAS entities and Mr. Tavares.

8 MR. CARLINSKY: Well, what we asked the JPLs, it was  
9 that we would ask Your Honor to keep the stay in place that Mr.  
10 Tavares got without prejudice at all to the JPLs' position and  
11 the JPLs would seek their own stay. They refused. They said  
12 we're not going to agree to that. We're only going to seek --  
13 we're going to seek our own stay.

14 But the real question is why is this happening and  
15 whose direction are they acting. Are they truly acting because  
16 they think they're acting in the best interest of Finance or  
17 are they doing so at the behest of somebody.

18 THE COURT: Have you made that argument to the BVI as  
19 to why they should not -- you know, they're not proper  
20 fiduciaries?

21 MR. CARLINSKY: I believe so. Greg, can you speak to  
22 that question?

23 MR. STARNER: Sure.

24 MR. CARLINSKY: I have not been involved in the BVI  
25 proceedings.

1 THE COURT: So, if the BVI court rejects that  
2 argument, isn't that an implicit conclusion that they're acting  
3 improperly as fiduciaries?

4 MR. CARLINSKY: Well, I'm not sure --

5 THE COURT: I mean, in other words, how many times  
6 are we going to litigate the same issue? The issue for the BVI  
7 Court is whether or not these two people should be JPLs.

8 MR. CARLINSKY: Right.

9 THE COURT: And that --

10 MR. CARLINSKY: But that --

11 THE COURT: And that issue is before the -- the issue  
12 you just raised --

13 MR. CARLINSKY: But this -- but --

14 THE COURT: -- is before the BVI Court.

15 MR. CARLINSKY: This issue, Your Honor, is slightly  
16 different which -- I don't think is before the BVI Court which  
17 is why did the JPLs and at whose behest and direction did the  
18 JPLs come to this Court and seek to withdraw Mr. Tavares'  
19 Chapter 15.

20 THE COURT: I just don't see how that is germane.  
21 Again, you can make a motion --

22 MR. CARLINSKY: Okay.

23 MR. CARLINSKY: -- but my reaction is the fact that  
24 they did it, yes, that's relevant because it's one of the  
25 activities that they've engaged in and they're going to argue

1 that's evidence that they're administering the estate but why  
2 they decided to do it and whether they did it in breach of  
3 their fiduciary duties to the creditors and the BVI is -- you  
4 know, I think that's something you should take up with the BVI  
5 Court which it sounds like you've done but again this all comes  
6 out of the letter I received this morning and anybody is free  
7 to make an appropriate motion. I think that's how it should be  
8 resolved.

9 MR. CARLINSKY: Well, just for clarification, with  
10 respect to the Chapter -- the Category 2 or Request Number 2  
11 documents, do we have Your Honor's ruling so we can proceed on  
12 that --

13 THE COURT: Well, my reaction is of everything I've  
14 heard that you're entitled to it for the reasons I've stated.  
15 They think otherwise. I haven't had the benefit of legal  
16 briefing or anything like that. You can make a motion.

17 MR. ROSENBLATT: Your Honor, may I just be heard for  
18 a moment. I just heard you on Request Number 2. As far as  
19 timing goes as ties into relevancy, it is very rare where we  
20 have a clear express indication from the Second Circuit on an  
21 issue but in the Fairfield decision and I know you're familiar  
22 with it, Your Honor, there's a heading which talks about COMI  
23 manipulation and it says relevant time period, and it's one  
24 sentence. The sentence says:

25 "To offset a debtor's ability to manipulate its COMI,

1 a court may also look at the time period between the  
2 initiation of a foreign liquidation proceeding and a  
3 filing of a Chapter 15 petition."

4 It's clear as day, Your Honor, the Second Circuit is  
5 telling us what is relevant in the context of a COMI  
6 manipulation issue.

7 THE COURT: But discovery may be relevant or is  
8 arguably relevant to whether or not the JPLs were manipulating  
9 COMI after they were appointed based upon this "conspiracy"  
10 that was entered into to get them appointed in the first place,  
11 and that's what their argument is. I understand what the law  
12 is but that was not a discovery decision. Yes, I have to look  
13 at what the JPLs did but why they did it is also -- you know,  
14 I'm repeating myself but why they did --

15 MR. ROSENBLATT: Well, Your Honor, I think all that  
16 goes to -- and respectfully, I think all of those issues, okay,  
17 the events leading --

18 THE COURT: Let me -- let me -- yeah, let me put it  
19 to you this way. The day before the petition in the BVI was  
20 filed, there is a document for evidence that Aurelius and Alden  
21 got together with Grant Thornton and said, you know, we have a  
22 really good idea. We have nothing to do with BVI but let's  
23 file the case here, we'll start to administer the case and  
24 we'll torpedo the New York Chapter 15 and maybe the Brazilian  
25 proceeding. You don't think I can consider that?

1 MR. ROSENBLATT: No, they should -- I'm sorry.

2 THE COURT: You don't think I can consider that?

3 MR. ROSENBLATT: I think they should go to the BVI,  
4 Your Honor. I think that that is --

5 THE COURT: I'm asking a different question on the  
6 issue of COMI. You don't think I can consider that?

7 MR. ROSENBLATT: I don't think that that's relevant,  
8 Your Honor. I think --

9 THE COURT: All right. I disagree.

10 MR. ROSENBLATT: It's in -- when they had their  
11 Chapter 15 case, they took the very clear position that  
12 recognition was a check-the-box process. It is very -- it's  
13 formulaic.

14 THE COURT: But nobody is arguing at least with the  
15 two Brazilian entities that COMI was manipulated and frankly  
16 nobody argued that COMI was manipulated with the Austrian  
17 entity.

18 MR. ROSENBLATT: Well, again I'm not sure how COMI  
19 was per se manipulated. They're not -- I mean, they were  
20 appointed by the BVI court. Are they suggesting that the BVI  
21 Court is complicit in COMI manipulation? We are basing our  
22 argument on COMI on what the provisional liquidators did from  
23 when they were appointed, Your Honor, the actions that they  
24 took to administer the BVI proceeding. I think that's why  
25 Fairfield is relevant. It talks about -- it tells you what is

1 relevant --

2 THE COURT: I understand --

3 MR. ROSENBLATT: -- respectfully --

4 THE COURT: -- they're arguing that the "conspiracy"  
5 to appoint the JPLs in the first place is part of the COMI --

6 MR. ROSENBLATT: And I respectfully submit, Your  
7 Honor, that that is an issue that they should take up in the  
8 BVI. If they believe that that's the case, that is perhaps a  
9 very valid basis to dismiss the BVI proceeding, and Your Honor,  
10 they have challenged -- they have lodged multiple challenges in  
11 the BVI. I think those issues are relevant to the BVI  
12 proceeding. I don't think that they're relevant at all to  
13 recognition.

14 The last issue I'll address, Your Honor, just very  
15 quickly because it's now been raised twice and I sat quietly at  
16 their recognition hearing and I didn't raise the issue but  
17 they've said with respect to their outstanding OAS Finance case  
18 about Section 305 and our ability to withdraw -- just to be  
19 very clear, Section 305 does not apply in a Chapter 15 case --

20 THE COURT: Well, stop. The only thing is I sort of  
21 have this hanging Chapter 15 case which was commenced by Mr.  
22 Tavares and it's there --

23 MR. ROSENBLATT: Your Honor, thirty seconds. Section  
24 103 of the Bankruptcy Code tells us what sections of the  
25 Bankruptcy Code apply in chapter cases, and Your Honor,

1 unfortunately, I was involved in the losing side of Ottavia  
2 [ph], you're aware -- if you learned anything from that case,  
3 it's this: It's the Second Circuit case literally 103. If a  
4 section [sic] is referenced in 103, it applies in Chapter 15.  
5 If it's not, it doesn't apply. They're --

6 THE COURT: Oh, you mean Barnett?

7 MR. ROSENBLATT: Yeah, yeah, and Barnett, yes.

8 I understand why they might be confused. Section  
9 305(b) does reference Chapter 15, and the purpose of that and  
10 it's addressed squarely in the British American case is there  
11 is a situation where post-recognition a foreign representative  
12 has the ability to perhaps dismiss a case that's filed -- a  
13 case that's filed perhaps an involuntary with respect to the  
14 foreign debtor but the issue is addressed squarely in the  
15 British American case, Your Honor. Section 305 does not apply  
16 in Chapter 15.

17 What should happen with respect to their -- the sort  
18 of in space --

19 THE COURT: Can't you make a motion to dismiss the  
20 petition though?

21 MR. ROSENBLATT: Well, Your Honor, I think we have  
22 the ability to just simply withdraw but at the very least just  
23 so third parties are aware of what's going on and I think Your  
24 Honor had mentioned this in the past, at the very least, they  
25 should file a 1518 statement updating parties who may not have

1 been in court during recognition, who may not know what's going  
2 on to let them know that we've been appointed and that they  
3 have no authority to act. They haven't done that, Your Honor,  
4 and I'm not sure why.

5           It may be again a matter of procedural -- we believe  
6 that we have the ability to withdraw it. 305 --

7           THE COURT: It's very rare that you can simply  
8 withdraw a petition and I'm not talking about 15 necessarily --

9           MR. ROSENBLATT: Yeah.

10           THE COURT: -- but involuntary petitions and  
11 obviously other types of petitions. I mean, I suppose under  
12 Rule 1018 I could make Rule 12 apply and you can make a motion  
13 to dismiss the petition on the grounds that the petition lacks  
14 authority.

15           MR. ROSENBLATT: Admittedly, it's an odd situation  
16 but certainly 305 --

17           THE COURT: Well, ruling COMI is also very odd with  
18 two different --

19           MR. ROSENBLATT: I've been involved in a lot of cases  
20 where you have dual main proceedings, Your Honor. Admittedly,  
21 I've never been involved in dual Chapter 15 ancillary  
22 proceedings.

23           But I do think it's clear though Section 305 does not  
24 apply. There is no requirement per se that we file a motion.  
25 Given that we are OAS Finance, we manage the company, and again



1 I know -- they are in denial and they don't acknowledge -- but  
2 we are. That is the situation, Your Honor. There is an order  
3 of the Court. We should be able to just have that matter  
4 withdrawn.

5 THE COURT: Well, I'm just saying procedurally even  
6 when people are clearly in charge in other chapters, you can't  
7 simply withdraw the petition.

8 MR. ROSENBLATT: Yeah.

9 THE COURT: And that's the only point I --

10 MR. ROSENBLATT: I (indiscernible) letter. So --

11 THE COURT: Just make a motion to dismiss the  
12 petition.

13 MR. ROSENBLATT: We can do that.

14 THE COURT: And say which is the appropriate rule,  
15 say it applies under Rule 1018.

16 MR. ROSENBLATT: Okay.

17 THE COURT: Presumably I'm going to look at the  
18 resolution of the dispute at least in the trial level --

19 MR. ROSENBLATT: I think that's fair.

20 THE COURT: -- in the BVI.

21 MR. ROSENBLATT: I think that's fair.

22 THE COURT: All right. Thank you very much.

23 MR. CUNNINGHAM: Thank you, Your Honor.

24 MR. CARLINSKY: Thank you, Your Honor.

25 (Concluded at 11:56 am.)

\*\*\*\*\*

C E R T I F I C A T I O N

I certify that the foregoing is a correct transcript  
from the electronic sound recording of the proceedings in the  
above-entitled matter.

Kathleen M. Price

DATE: June 5, 2015

Kathleen Price, AAERT Cert. No. 325

Certified Court Transcriptionist

AD HOC TRANSCRIPTION, LLC